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FEDERAL COMMUNICATIONS COMMISSION

In Re:

KEITH PERRY,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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)
)
)
)

No.: CIB 98-46

Pages: 1 through 8

Place: Washington, D.C.

Date: May 20, 1998

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BEFORE THE UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

KEITH PERRY,)	
)	
Plaintiff,)	
)	
v.)	No.: CIB 98-46
)	
THE UNITED STATES,)	
)	
Defendant.)	

Courtroom 1, Room 201
2000 L Street, N.W.
Washington, DC

Wednesday,
20 May 1998

The parties met, pursuant to the notice of the
Judge, at 9:03 a.m.

BEFORE: HON. ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

(9:03 a.m.)

JUDGE STEINBERG: On the record now. This is a pre-hearing conference in CIB Docket No. 98-46 involving an order to show cause, and notice of opportunity for hearing directed against Keith Perry, of Leander, Texas. By order of April 16, 1998 the Acting Chief Administrative Law Judge assigned the case to me.

Let me take the appearances first for Keith Perry. Let the record reflect, no response. For the Chief Compliance and Information Bureau.

MS. SUZON LANDECK: Suzon Landeck, Compliance Information Bureau.

MR. ARONOWITZ: Alan Aronowitz for the Mass Media Bureau.

JUDGE STEINBERG: Now, the first order of business is, we have to discuss notice of appearance.

Paragraph 13 of the Order to Show Cause, and Notice of Opportunity for Hearing, FCC 98-62, released April 6, 1998, which I will refer to as the OSC.

Citing Section 1.91(c) of the Commission's rules, the record was filed within twenty days of the mailing of the OSC a written appearance stating that he will appear at the hearing, and present evidence on matters specified in the OSC.

1 According to the Commission's records, the OSC was
2 mailed to Mr. Perry on April 8, 1998. Therefore,
3 Mr. Perry's written appearance was due to be filed on April
4 28, 1998, only three weeks ago.

5 The date I have not seen, and the Commission has
6 no official record reflecting the filing of any formal
7 written appearance by, or on behalf of Mr. Perry.

8 However -- there's always a however -- I do have a
9 copy of something from Mr. Perry entitled, "Certified Demand
10 for FCC Jurisdiction," which is dated April 13, 1998 and
11 addressed to the Chief of the Compliance and Information
12 Bureau.

13 It does not appear that this document was
14 officially, or properly filed at the Commission. And, I
15 received my copy of this document from the Complaints and
16 Political Programming branch of the Mass Media Bureau.

17 Technically, I don't have to take cognizance of it
18 because it's not addressed to me, and it's not filed with
19 the Commission. But, in this document, first it appears
20 that Mr. Perry is questioning the FCC's jurisdiction over
21 him.

22 In the second paragraph of page 1, Mr. Perry
23 states that certain information he is requesting "is
24 necessary to enable the undersigned to adequately prepare a
25 meaningful and affirmative defense to the charges,

1 allegation, and/or penalties imposed, and/or threatened in
2 the within case (CIB Docket No. 98-46)."

3 Let me ask Ms. Landeck if she or Mr. Aronowitz has
4 seen any kind of formal notice of appearance from Mr. Perry?

5 MR. ARONOWITZ: No, Your Honor. In fact, the only
6 submission he did make was the April 13, 1998 submission we
7 refer to.

8 JUDGE STEINBERG: Does the Bureau have a position
9 on whether the certified demand for FCC jurisdiction
10 constitutes a written appearance?

11 MR. ARONOWITZ: Yes, Your Honor, we believe that
12 it doesn't -- that it does not.

13 Regardless of the jurisdictional question,
14 certainly, an ability to file a Notice of Appearance to be
15 heard could be done, and could be filed.

16 But, even further, in the April 13 submission he
17 suggests he'll defend himself if the Commission establishes
18 its jurisdiction.

19 In the OSC the Commission's jurisdiction is
20 clearly set forth. So, it's unclear as to the basis for his
21 questioning of the jurisdiction in such broad strokes.

22 In any event, the notice does not indicate that he
23 would appear at a hearing to present evidence on the issues
24 and abide by the Commission's rules and processes.

25 JUDGE STEINBERG: Okay. So, basically, your

1 position is -- and, I'm quoting at 1.91 of the Rules, and
2 I'm quoting, "...to avail himself of the opportunity for
3 hearing, the Respondent personally, or by his attorney,
4 shall file with the Commission..." (dot, dot, dot is my
5 inserts, not in the Rule) -- a written appearance stating
6 that he will appear at the hearing and present evidence in
7 the matter specified in the Order."

8 Your position is, he must do that, and that he
9 hasn't done that?

10 MR. ARONOWITZ: Yes, Your Honor.

11 JUDGE STEINBERG: And, that, even though paragraph
12 2, may imply that he's preparing some kind of a defense, he
13 never, explicitly, states that he will appear and present
14 evidence.

15 MR. ARONOWITZ: That's correct, Your Honor.

16 JUDGE STEINBERG: Okay. What do we do from there?
17 Assuming that this is not considered a Notice of Appearance,
18 where do we go from there?

19 MR. ARONOWITZ: Certify the matter to the
20 Commission pursuant to Section 1.92 of the Rules.

21 JUDGE STEINBERG: Okay. My 1.92(c), I have
22 1.92(a)1, provides that the failure to file a timely written
23 appearance, indicating that the Respondent will appear at a
24 hearing and present evidence on the matter specified in the
25 OSC "will constitute a waiver of such hearing."

1 So, your position would be that the failure to
2 file a Notice of Appearance constitutes a waiver --

3 MR. ARONOWITZ: -- of the hearing. Yes, Your
4 Honor.

5 JUDGE STEINBERG: And, as a result of the waiver,
6 in 1.92(c) of the Rules kicks in, which basically says that
7 the presiding judge shall issue an order reciting the
8 events, or circumstances constituting the waiver of hearing,
9 terminating the hearing proceeding, and certifying the case
10 to the Commission."

11 MR. ARONOWITZ: Yes, Your Honor.

12 JUDGE STEINBERG: That's what you want me to do?

13 MR. ARONOWITZ: Yes, Your Honor.

14 JUDGE STEINBERG: Okay. Do I have to say anything
15 in my order about the certified demand for FCC jurisdiction?
16 Say something, like it -- a letter was sent, was not filed,
17 and the Bureau's position, which the presiding Judge concurs
18 that this does not constitute a Notice of Appearance?

19 MR. ARONOWITZ: Yes, Your Honor. Insofar as, I
20 believe, the certification must contain a description of the
21 circumstances that do constitute the waiver to hearing.

22 JUDGE STEINBERG: Okay. Now, what do I do with
23 the Compliance and Information Bureau's request for
24 admissions of fact, and genuineness of documents, dated May
25 8, and addressed to Mr. Arnold and the erratum thereto,

1 dated May 12, and addressed to Mr. Arnold?

2 MR. ARONOWITZ: I believe, those would be
3 considered moot.

4 JUDGE STEINBERG: Okay. So, I can dismiss them as
5 moot?

6 MR. ARONOWITZ: Yes.

7 JUDGE STEINBERG: Okay. Anything else we need to
8 talk about?

9 MR. ARONOWITZ: I don't believe so, Your Honor.

10 JUDGE STEINBERG: Okay. Then, I will take your
11 comments under advisement, and issue something this week.
12 Okay, we'll go off the record now.

13 (Whereupon, at 9:10 a.m. the hearing was
14 adjourned.)

15 Okay, we're back on the record at 9:11 a.m. While
16 we were off the record, after I terminated the conference,
17 it was pointed out to me that I mistakenly used a name
18 "Arnold" and Mr. Arnold was at a pre-hearing conference on
19 Monday, involving Mr. Arnold, and I meant to say, Keith
20 Perry.

21 So, I will, basically, amend -- if I said, Arnold
22 or, Mr. Arnold, in the course of the conference, I want to
23 amend that to mean, Keith Perry, Mr. Perry. And, thank you
24 for pointing that out, and now, we'll go off the record
25 again.

1 (Whereupon, at 9:13 a.m. the hearing was
2 adjourned.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: CIB 98-46
CASE TITLE: Keith Perry
HEARING DATE: May 20, 1998
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 5/20/98

Gary M. Thompson *Gary M. Thompson*
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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 5/22/98

Linda H. Harris-Proctor
Linda Harris Proctor
Official Transcriber
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date: 5/27/98

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